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January 7, 2005

By Fax: 202-418-0187
and Federal Express

Letter of Appeal
Federal Communications Commission
Office of the Secretary
445 - 12th Street, S.W.
Washington, DC 20554

REQUEST FOR REVIEW

Re: **APPEAL OF (1) COMMITMENT ADJUSTMENT LETTER
AND (2) SUBSEQUENT DENIAL OF SAID APPEAL BY
THE SCHOOLS AND LIBRARIES DIVISION OF THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
CC DOCKET NO.: 02-6
FUNDING YEAR: 2002 Through 2003
FORM 471 APPLICATION NUMBER: 307730
APPLICANT NAME: Kearny Christian Academy
APPLICANT CONTACT: David Manzo
BILLED ENTITY NAME: Kearny Christian Academy
BILLED ENTITY NUMBER: 227328
BILLED ENTITY AND APPLICANT
CONTACT PHONE NO. (201) 998-9460
SERVICE PROVIDER: Independent Computer Maintenance, LLC
SERVICE PROVIDER IDENTIFICATION NO.: 14326573
SERVICE PROVIDER CONTACT PERSON: Anthony Natoli
SERVICE PROVIDER CONTACT PHONE NO.: 973-916-1800
SERVICE PROVIDER FAX NO.: 973-916-1986
SERVICE PROVIDER E-MAIL:
TONYN@ICM CORPORATION.COM**

No. of Copies rec'd 0
List ABOVE:

Enclosure 1: Copy of Administrator's Decision on Appeal -
Funding Year 2002-2003 for Kearny Christian
Academy dated November 16, 2004.

Enclosure 2: Copy of Independent Computer Maintenance, LLC
Appeal of Commitment Adjustment -
Funding Year 2002-2003 for Kearny Christian
Academy dated May 12, 2004.

Enclosure 3: Copy of FCC Decision entitled "In Re

Since 1985

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**Federal-State Joint Board of Universal Service,
et al.," adopted on July 23, 2004.**

Gentlemen:

NOTICE OF APPEAL

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") Administrator's Decision on Appeal - Funding Year 2002-2003, dated November 16, 2004. Said decision denied in full ICM's appeal of USAC's Commitment Adjustment Letter dated March 16, 2004, which letter rescinded in full the Funding Request Numbers ("FRNs") set forth below. A copy of USAC's Administrator's Decision on Appeal - Funding Year 2002-2003 dated November 16, 2004, is annexed hereto as Enclosure 1. A copy of ICM's Appeal to the USAC, and its enclosures, is annexed hereto as Enclosure 2.

FACTS

By a Commitment Adjustment Letter dated March 16, 2004, USAC advised ICM that, under the above-referenced Form Application Number, the commitment amount for the following FRN's are "rescinded in full" and requested the recovery of the funds to the extent indicated below:

<u>Funding Request Number ("FRN")</u>	<u>Requested Recovery</u>
779828	\$ 35,775.00
799843	\$ 11,448.00
779903	\$ - 0 -

The USAC's March 16, 2004 Commitment Adjustment decision was justified by USAC because:

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"SLD found similarities in Forms 470 and Technology Plans among the applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result, the commitment amount is rescinded in full." (Emphasis added) (A copy of the March 16, 2004 Commitment Adjustment Letter is annexed as Enclosure A of Enclosure 2.)

On May 12, 2004, ICM submitted its Letter of Appeal with respect to the aforesaid Commitment Adjustment Letter citing a number of reasons why the proposed Commitment Adjustment was improper and wrong, including the fact that ICM had no contact with the applicant, Kearny Christian Academy, during the period the Form 470 and Technology Plan in question was prepared or filed. By letter dated November 16, 2004, the USAC issued an Administrator's Decision of Appeal - Funding Year 2002-2003, denying in full ICM's appeal.

The Administrator's Decision of Appeal - Funding Year 2002-2003 cites the following reasons for its rejection of ICM's appeal:

"It has been determined that the applicant documentation that was submitted to SLD during the course of the Item 25 Selective Review process indicates that similarities in the Form 470: 756960000401729 and technology plan exist. During the course of the appeal review, it was determined that the applicants' form identifier is the Form 470 number, standard services are sought for each service category, service or function and quantity and/or capacity is written in all capital letters. Upon review of the Item 25 documentation that was submitted, it was determined that identical language exists for all six competitive questions, the template fax back has identical wording in what appears to be the same handwriting, and the template technology plan has identical wording and format. Based upon this documentation, it was determined that similarities exist within the Form 470 and technology plan which indicate that the original vendor, Diversified Computer Solutions, Inc., was improperly involved in the competitive bidding process. Consequently, the appeal is denied in full." (Emphasis added)

While ICM was apparently successful in dispelling the reason USAC originally rescinded in full the FRNs, to wit, that ICM "was improperly involved in the competition bidding process," the Administrator only modified the original finding to find that there was an indication that the

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prior vendor, not ICM, was "improperly involved in the competitive bidding process" and rejected ICM's appeal on that basis.

Notwithstanding the fact that ICM was apparently successful in convincing the Administrator that the critical fact USAC based its prior decision on was wrong and ICM was not improperly involved in the competitive bidding process, the damage to ICM of rescinding in full the FRNs remained intact. This determination by the Administrator must be reversed because 1) it was clearly arbitrary and capricious 2) it fails any test of adequate due process, 3) it was decided based upon assumption, consequential evidence and conjecture, and 4) it is not supported by any factual determinations as well as the fact that it violates the holding and directive of the FCC contained in *In re Federal-State Joint Board on Universal Service*, 19 FCC Rcd 15252, adopted by the FCC on July 23, 2004. [hereinafter *In re Federal-State*]. On November 23, 2004, ICM requested the SLD to reconsider its decision based upon *In re Federal-State* holding.

ARGUMENTS

1. These determinations by the Universal Services Administrative Company ("USAC") were founded upon assumptions which had no basis in fact and were made in the absence of sufficient information. Since the bases of USAC's were founded on mere assumption, consequential evidence, and conjecture, the Administrator's Decision was arbitrary and capricious. In particular these determinations were wrong for the following reasons:

A. As stated in ICM's appeal of the Commitment Adjustment Letter dated May 12, 2004, ICM had obtained from the USAC website a copy of the Form 470 or had requested and received from Kearny Christian Academy, a copy of the Form 470 and technology plan that are at issue in this appeal. In addition, ICM had requested and received other Forms 470 and technical plans associated with other Form 471 Application Numbers being questioned by other Commitment Adjustment Letters. ICM compared the Form 470 and technology plan at issue in this appeal with other Form 470 and technology plans which are the subject matter of other Commitment Adjustment Letters received by ICM. A review of these Forms 470 indicated that the Form 470 is a standard form with a few spaces to be completed by the applicant. The form itself is obviously identical to all other Forms 470 and a detailed analysis of the applicant completed sections of the Form 470 at issue in this appeal verses the Forms 470 at issue in the other Commitment Adjustment Letters indicates that the Forms, while being similar, are certainly not identical in all respects. Furthermore, in all likelihood comparing these Forms 470 to any other Forms 470 would yield similar results.

With respect to the technology plans, ICM compared the technology plan at issue in this appeal with the other technology plans being questioned by other Commitment

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Adjustment Letters received by ICM. Again, while the plans are similar, they all appear to be based upon information and sample technology plans ("Sample Technology Plans") that were available on the E-Rate Central website (www.e-ratecentral.com). Attached to ICM's May 12, 2004 Appeal, as Enclosure D, was a copy of a technology plan that is the subject matter of this appeal and as Enclosure E a copy of Sample Technology Plans that was printed from the E-Rate Central website. While there are some differences in the technology plans, they are all substantially similar to each other and the Sample Technology Plans. While ICM has no knowledge concerning the preparation of the technology plan at issue in this appeal, it is clear that Kearny Christian Academy very likely accessed the E-Rate Central website and utilized the website as a basis for the preparation of its technology plan, as apparently did other applicants thereby yielding technology plans that are similar. To draw a conclusion that ICM, Diversified Computer Solutions, Inc., or any other party "was improperly involved in the competitive bidding process" from such circumstantial and unconvincing evidence is a harsh leap of faith that cannot be justified in this forfeiture case where the continued existence of ICM is at stake.

B. Although ICM was successful in convincing the Administrator that not only was it not "improperly involved with the competitive bidding process", and that alone should have been ample basis for rescinding the Commitment Adjustment Letter, the Administrator seems to ignore the reversal of this vital factual issue, and then denies the appeal based on evidence that was never considered in the prior appeal.

For the first time, in the Administrator's decision, it is indicated that the Administrator has reviewed "applicant documentation that was submitted to SLD during the course of the Item 25 Selective Review process". Not only did the original Commitment Adjustment Letter fail to mention this evidence, but again this was a process of which ICM had no connection with whatsoever, and had no knowledge concerning the documents that may have been filed or considered in connection with that review.

The fact that the Administrator considered this review and related documents without giving ICM notice of this new or additional evidence and a right to review it and comment or refute it, is an unconscionable violation of Due Process. "The Due Process Clause provides that certain substantive risks - - life, liberty and property - - cannot be deprived except pursuant to constitutionally adequate procedures." *Cleveland Board of Education v. Loudermill, et al.* 470 U.S. 532, 541 (1985). These procedures would include notice of the evidence and a right to be heard concerning that evidence. In this matter, the Administrator considered new or different evidence than was considered as the basis for issuing the Commitment Adjustment Letter, without notice to ICM or a right for ICM to contest that new evidence. This was a fundamental violation of ICM's right of Due Process. This Commission has held that "submission of new evidence following a funding commitment decision letter is permitted only under limited circumstances". *In re Atlantic City Public School District*, 17 FCC Rcd 25186, 25189 on December 16, 2002.

To make matters worse, this proceeding, in its essence, is an attempt to recover funds from ICM and, therefore, is an attempt to enforce a forfeiture of ICM's property. If any civil proceeding deserves the procedural safeguards of Due Process, it is a forfeiture proceeding. This Commission cannot expect a small business like ICM, which is being faced with financial ruin if it cannot reverse these commitment adjustments, to adequately defend its position when the USAC, on deciding its appeal, considers new evidence that ICM had no notice of or for that matter had any knowledge of whatsoever. Based upon this total lack of both substantive and procedural due process, this Commission must grant this Appeal, rescind the Commitment Adjustment Letter, and reinstate all commitment amounts in full.

C. The proposed commitment adjustments should be reversed on equitable grounds. ICM, which by the USAC's own admission, had nothing to do with any alleged improprieties in the competitive bidding process is being asked to bear the brunt of some other entity's alleged improper acts. If these proposed commitment adjustments remain as proposed, ICM will have rendered non-recoverable goods and services and have effectively received no compensation for its efforts which it rendered in accordance with its contractual commitments. On the other hand, an applicant who may have been a party to an improper competitive bidding procedure will have received goods and services and have incurred no costs for their acquisition. This would be a gross injustice where an innocent party is punished and a culpable party receives an undeserved benefit. This Commission has, in the past, reviewed the equities of various matters and when, as in this case, these equities weighed heavily in favor of an aggrieved party, this Commission waived the technical requirements of regulations to achieve a just outcome. *In re Shawnee Library System*, 17 FCC Rcd 11824, 11829 on January 25, 2002; *In re Folsom Cordova United School District*, 16 FCC Rcd 20215, 20220 on November 13, 2001. In order to avoid an unwarranted hardship to ICM and to achieve a just result, the Commission should issue a waiver with respect to the FRNs in issue and the competitive bid rules. On the equity considerations alone, the commitment adjustment results should be cancelled and all FRNs reinstated in full.

2. Subsequent to the filing of ICM's Appeal on May 12, 2004, but prior to the Administrator's Decision on Appeal issued on November 16, 2004, the Federal Communication Commission ("FCC") adopted *In re Federal-State Joint Board on Universal Service*, 19 FCC Rcd 15252 on July 23, 2004 [hereinafter *In re Federal-State*]. A copy of that decision is annexed hereto as Enclosure 3.

This decision, issued by the FCC in response to petitions by various providers, directed the USAC to re-direct its efforts to recover any funds that had been allegedly distributed unlawfully from the providers to the party or parties who have committed the statutory or rule violation in question.

The FCC further stated with respect to the "party or parties who have committed the statutory or rule violation" that:

"We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider." *In re Federal-State*, 19 FCC Rcd at par. 10.

In reaching this conclusion, the FCC noted that:

The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive bidding requirements as set forth in Sections 54.504 and 54.511(a) of our rules and related orders. The school or the library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services.

Id. at par. 11.

It further went on to discuss that the service providers also have to follow the rules and regulations, but those are with regard to

the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for the services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider. (Emphasis added)

Id. at par. 11.

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Finally, with respect to the applicability of the decision to other cases, the FCC stated that:

"[t]his revised recovery approach shall apply on a going forward basis to all matters for which the USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency." *Id.* at par. 10.

Applying this language and this directive of the FCC to the case at hand and the Commitment Adjustment Letter, and the Administrator's Decision on Appeal dated November 16, 2004, it is clear that ICM had absolutely nothing to do with the original application process and, as such, it is merely a provider that needs to uphold the provider's obligations as delineated above by the FCC. It is the Kearny Christian Academy who was the applicant and who obtained these grants and, therefore, was the entity that needed to comply with all the rules and regulations concerning the application process and, as such, it is that School to whom the Schools and Library Division must look to first to recover any funding that may have been granted in violation of any statute, regulation or rule. Based upon this decision, the FCC has conclusively decided the issue presented in this appeal and has held that the USAC should proceed against the wrongdoing applicant to recover any questionable payments and not the innocent provider.

CONCLUSION

For the reasons set forth above, ICM hereby requests that the relief requested in this appeal be granted and the finding as contained in Universal Service Administrative Company's letter of March 16, 2004 be reversed and that all commitment amounts be reinstated in full.

As noted in ICM's earlier appeal, most of the efforts ICM has expended under the aforesaid FRNs were labor hours, internet and telephone charges, cabling and other non-recoverable items, therefore, the rescission of the FRNs would be a ~~disastrous~~ ^{severe hardship} on this small business that would effectively terminate ICM's ability to continue as a viable entity. If these commitment adjustments are allowed to remain, not only would the management of ICM lose their investment, 15 employees would lose their jobs and a large number of local businesses that rely on ICM could also be adversely affected. This would occur all because of some very serious deficient findings of fact, unsubstantiated conclusions, and disregard of the applicable law. Both the law and the equity of this situation require this Commission to uphold this appeal and reinstate all the commitments at issue in full.

If you have any further questions concerning this matter, please contact the undersigned at the address and telephone number indicated above, or our attorney, Gary Marcus, of the law

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firm of Goldberg & Connolly, 66 North Village Avenue, Rockville Centre, NY 11570, telephone
No. 516-764-2800, fax No. 516-764-2827, e-mail gmarcus@goldbergeconnolly.com.

Very truly yours,

INDEPENDENT COMPUTER MAINTENANCE, LLC

By: 

Anthony Natoli, President

ENCLOSURE 1

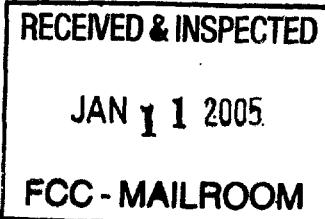


Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2002-2003

November 16, 2004

Anthony Natoli
Independent Computer Maintenance, LLC
1037 Route 46 East, Suite C-102
Clifton, NJ 07013



Re: Kearny Christian Academy

Re: Billed Entity Number: 227328
471 Application Number: 307730
Funding Request Number(s): 779828, 799843, 779903
Your Correspondence Dated: May 12, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2002 Commitment Adjustment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 779828, 799843, 779903
Decision on Appeal: Denied in full
Explanation:

- You state that the determinations made by USAC for the above funding requests were founded on assumptions which had no basis in fact and were made in the absence of sufficient information. You state that Independent Computer Maintenance, LLC (ICM) had no contact with the applicant, Kearny Christian Academy at the time the Form 470 and technology plan were filed on or about December 15, 2001. ICM became involved with this funding request on July 24, 2003 when, pursuant to a SPIN change request from the applicant, ICM was named the proposed new service provider replacing the previous provider, Diversified Computer Solutions, Inc. A copy of the applicant's request for a SPIN change and approval is included with the appeal. ICM had no input with the Form 470 that was filed or the technology plan preparation. ICM has obtained a copy of the Form 470 and has compared the Form 470 and technology plan at issue and after a review of the documentation it seems that they are a standard

type form with few spaces to be completed by the applicant. The form itself is actually identical to all other Forms 470 at issue in this appeal as well as the Forms 470 connected with other Commitment Adjustment Letters. With respect to the technology plans, ICM has compared the technology plan at issue with other technology plans being questioned and again, while the plans are similar, they all appear to be based upon information and sample technology plans that are available on the E-Rate Central website. ICM had no knowledge concerning the preparation of the technology plan at issue and it appears that the entity very likely accessed the E-Rate Central website and utilized the website as a basis for the preparation of its technology plan, as apparently other applicants did, thereby yielding technology plans that are similar.

- After a thorough review of the appeal and all relevant documentation, it has been determined that the documentation you submitted to SLD during the course of the Item 25 Selective Review process indicates that similarities in the Form 470: 756960000401729 and technology plan exist. During the course of the appeal review, it was determined that the applicant's form identifier is the Form 470 number, standard services are sought for each service category, service or function and quantity and or capacity is written in all capital letters. Upon review of the Item 25 documentation that was submitted, it was determined that identical language exists for all six competitive bidding questions, the template fax back has identical wording in what appears to be the same handwriting, and the template technology plan has identical wording and format. Based on this documentation, it was determined that similarities exist within the Form 470 and technology plan which indicate that the original vendor, Diversified Computer Solutions, Inc., was improperly involved in the competitive bidding process. Consequently, the appeal is denied in full.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: David Manzo
Kearny Christian Academy
172 Midland Avenue
Kearny, NJ 07032

ENCLOSURE 2

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INDEPENDENT COMPUTER MAINTENANCE, LLC
1037 Route 46 East, Suite C102
Clifton, NJ 07013

May 12, 2004

Letter of Appeal
The Universal Service Administrative Company
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany NJ 07981

Re: **APPEAL OF COMMITMENT ADJUSTMENT**
FUNDING YEAR: 2002 Through 2003
FORM 471 APPLICATION NUMBER: 307730
APPLICANT NAME: Kearny Christian Academy
APPLICANT CONTACT: David Manzo
BILLED ENTITY NAME: Kearny Christian Academy
BILLED ENTITY NUMBER: 227328
BILLED ENTITY AND APPLICANT CONTACT
PHONE NO. (201) 998-9460
SERVICE PROVIDER: Independent Computer Maintenance, LLC
SERVICE PROVIDER IDENTIFICATION NO.: 143026575
SERVICE PROVIDER CONTACT PERSON: Anthony Natoli
SERVICE PROVIDER CONTACT PHONE NO.: 973-916-1800
SERVICE PROVIDER FAX NO.: 973-916-1986
SERVICE PROVIDER E-MAIL:
TONYN@ICMCORPORATION.COM

Enclosure A: Copy of Commitment Adjustment Letter from
Universal Service Administrative Company
dated March 16, 2004.

Enclosure B: Copy of SPIN Change Requests of Kearny
Christian Academy dated July 24, 2003
and September 26, 2003

Enclosure C: Copy of SLD Client Operations' e-mails dated
August 12, 2003 and October 8, 2003
approving the SPIN change.

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**Enclosure D: Copy of Technology Plan for Kearny
Christian Academy (for years 2003-2004 revised)**

**Enclosure E: Copy of Sample
Technology Plan.**

Gentlemen:

NOTICE OF APPEAL

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of your Commitment Adjustment Letter dated March 16, 2004 rescinding in full the Funding Request Numbers ("FRNs") set forth below. A copy of that Commitment Adjustment Letter and its attachments are annexed hereto as Enclosure A.

FACTS

The March 16, 2004 Commitment Adjustment Letter concerning the above-referenced Form Application Number advised ICM that "the commitment amount" for the following FRNs are "rescinded in full" and request the recovery of the funds to the extent indicated below:

<u>Funding Request Number</u>	<u>Requested Recovery</u>
779828	\$ 35,775.00
799843	\$ 11,448.00
779903	-0-

The identical reason given for the rescission of all of the above-mentioned FRNs was as follows:

"After a thorough review, it has been determined that this funding request must be rescinded in full. SLD found similarities in Forms 470 and technology plans among the applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result the commitment amount is rescinded in full."

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The Universal Service Administrative Company
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ARGUMENT

These determinations by the Universal Services Administrative Company ("USAC") were founded upon assumptions which had no basis in fact and were made in the absence of sufficient information. In particular these determinations were wrong for the following two reasons:

1. ICM had no contact with the applicant, Kearny Christian Academy, at the time the Form 470 and technology plan were filed by Kearny Christian Academy on or about December 15, 2001. ICM did not become involved with the above-mentioned FRNs until July 24, 2003 and September 26, 2003, when, pursuant to a SPIN change requests of Kearny Christian Academy, ICM was proposed as the new service provider replacing Diversified Computer Solutions, Inc. Copies of Kearny Christian Academy's requests for SPIN changes are annexed hereto as Enclosure B along with a copies of e-mails from SLD Client Operations to ICM dated August 12, 2003 and October 8, 2003, granting the aforesaid requested SPIN changes which are annexed hereto as Enclosure C.

2. Notwithstanding the fact that ICM had no input into either the Form 470 or technology plan preparation, ICM has obtained from the USAC website a copy of the Form 470 or has requested and received from Kearny Christian Academy¹, a copy of the Form 470 and technology plan that are at issue in this appeal. In addition, ICM has requested and received other Forms 470 and technical plans associated with other Form 471 Application Numbers being questioned by other Commitment Adjustment Letters. ICM has compared the Form 470 and technology plan at issue in this appeal with other Form 470 and technology plans which are the subject matter of other Commitment Adjustment Letters received by ICM. A review of these Forms 470 indicates that the Form 470 is a standard form with a few spaces to be completed by the applicant. The form itself is obviously identical to all other Forms 470 and a detailed analysis of the applicant completed sections of the Form 470 at issue in this appeal verses the Forms 470 at issue in the other Commitment Adjustment Letters indicates that the Forms, while being similar, are certainly not identical in all respects. Furthermore, in all likelihood comparing these Forms 470 to any other Forms 470 would yield similar results.

¹Kearny Christian Academy supplied ICM with the attached Technology Plan designated "(For Years 2003-2004) Revised." Kearny Christian Academy advised ICM that it is exactly the same plan it submitted for 2002-2003 and they only changed the plan dates to 2003-2004 and designated it Revised.

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The Universal Service Administrative Company
Schools and Libraries Division
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With respect to the technology plans, ICM has compared the technology plan at issue in this appeal with the other technology plans being questioned by other Commitment Adjustment Letters received by ICM. Again, while the plans are similar, they all appear to be based upon information and sample technology plans ("Sample Technology Plans") that are available on the E-Rate Central website (www.e-ratecentral.com). Attached as Enclosure D is a copy of a technology plan that is the subject matter of this appeal and as Enclosure E a copy of Sample Technology Plans that was printed from the E-Rate Central website. While there are some differences in the technology plans ICM reviewed, they are all substantially similar to each other and the Sample Technology Plans. While ICM has no knowledge concerning the preparation of the technology plan at issue in this appeal, it is clear that Kearny Christian Academy very likely accessed the E-Rate Central website and utilized the website as a basis for the preparation of its technology plan, as apparently did other applicants thereby yielding technology plans that are similar.

CONCLUSION

It was inappropriate and wrong for USAC to arrive at determinations that ICM was improperly involved in the competitive bid process. These determinations were based upon assumptions that have no basis in fact. While the Forms 470 and technology plans among some of the applicants associated with ICM may have been similar, there are obvious other reasons for the similarity, including the fact that they were modeled on Sample Technology Plans available on a public website. However, and most important, it needs to be stressed that ICM has nothing to do with the preparation of either the 470 or the technology plan associated with the above-referenced Form 471 Application Number and the aforesaid FRNs and was not involved with the Form 470, the technology plan or the FRNs referenced in the Commitment Adjustment Letter until the SPIN change which was effective August 5, 2003 and September 30, 2003, more than 19 months after Kearny Christian Academy filed the Form 470 and the technology plan for the 2002 through 2003 Funding Year.

For the reasons set forth above, ICM hereby requests that the finding as contained in Universal Service Administrative Company's letter of March 16, 2004 be reversed and that all commitment amounts be reinstated in full.

Finally, it should be noted that most of the efforts ICM has expended under the aforesaid FRNs were labor hours, internet and telephone charges, cabling and other non-recoverable items, therefore, the rescission of the FRNs would be a disastrous and an unusually severe hardship on this small business.

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The Universal Service Administrative Company
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If you have any further questions concerning this matter, please contact the undersigned at the address and telephone number indicated above, or our attorney, Gary Marcus, of the law firm of Goldberg & Connolly, 66 North Village Avenue, Rockville Centre, NY 11570, telephone No. 516-764-2800, fax No. 516-764-2827, e-mail gmarcus@goldbergconnolly.com.

Very truly yours,

INDEPENDENT COMPUTER MAINTENANCE, LLC

By: _____


Anthony Natoli, President

Enclosure A



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

March 16, 2004

Anthony Natoli
Independent Computer Maintenance, LLC
1037 Route 46 East
Clifton, NJ 07013

Re: COMMITMENT ADJUSTMENT

Funding Year: 2002 -2003

Form 471 Application Number: 307730

Applicant Name KEARNY CHRISTIAN ACADEMY

Contact Person: DAVID MANZO

Contact Phone: 201-998-9460

Dear Service Provider Contact:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust these funding commitments. The purpose of this letter is to inform you of the adjustments to these funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from the application for which adjustments are necessary. The SLD is also sending this information to applicant, so that you may work with them to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. We expect to send you a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to the applicant. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

TO APPEAL THIS DECISION:

If you wish to appeal the Funding Commitment Decision indicated in this letter, your appeal must be **POSTMARKED** within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, copy the language or text from the Commitment Adjustment Letter that is at the heart of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125- Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We encourage the use of either the e-mail or fax filing options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. on the first page of your appeal to the FCC. Your appeal must be **POSTMARKED** within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.

Funding Commitment Report for Application Number: 307730

Funding Request Number 799828 SPIN: 143026575

Service Provider: Independent Computer Maintenance, LLC

Contract Number: 10685

Services Ordered: INTERNET ACCESS

Site Identifier: 227328 KEARNY CHRISTIAN ACADEMY

Billing Account Number:

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$35,775.00

Funds to be Recovered: \$35,775.00

Funding Commitment Adjustment Explanation:

After a thorough review, it has been determined that this funding request must be rescinded in full. SLD found similarities in Forms 470 and technology plans among applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result the commitment amount is rescinded in full.

T1
KRY-01

Funding Request Number 799843 SPIN: 143026575

Service Provider: Independent Computer Maintenance, LLC

Contract Number: 10686

Services Ordered: INTERNET ACCESS

Site Identifier: 227328 KEARNY CHRISTIAN ACADEMY

Billing Account Number:

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$11,448.00

Funds to be Recovered: \$11,448.00

Funding Commitment Adjustment Explanation:

After a thorough review, it has been determined that this funding request must be rescinded in full. SLD found similarities in Forms 470 and technology plans among applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result the commitment amount is rescinded in full.

Local Loop
KRY-02